

A **SISTEM PENYURAIAN TRAFIK KL
BARAT SDN BHD**

v.

B **KENNY HEIGHTS DEVELOPMENT
SDN BHD & ANOR**

COURT OF APPEAL, PUTRAJAYA
LOW HOP BING JCA
ABDUL MALIK ISHAK JCA

C KN SEGARA JCA
[CIVIL APPEAL NO: W-01-62-2005]
9 JANUARY 2009

D **CIVIL PROCEDURE:** *Parties - Intervention - Application to intervene in land reference proceedings - Rights of intervener - Whether intervener had direct interest in subject matter of action - Leave to intervene - Land acquired to build highway - SPRINT given concession to build highway - Whether SPRINT has direct legal interest in compensation payable to land owner under acquisition - Whether SPRINT a "person interested" within meaning of Land Acquisition Act 1960 - Rights of SPRINT to pay land owner for acquisition will be directly affected if SPRINT not allowed to intervene - Whether leave to intervene ought to be given - Rules of the High Court 1980, O. 15 r. 6(2)(b)*

F **EVIDENCE:** *Adverse inference - Document not produced - Illustration (g) to s. 114 Evidence Act 1950 - Whether mandatory for court to invoke adverse inference - Adverse inference for failing to produce privatization agreement in its entirety - Privatization agreement contained confidentiality clause prohibiting disclosure - Adverse inference to be invoked only in cases of withholding of evidence and not merely on account of failure to obtain evidence - Whether fit and proper case for adverse inference rule to be invoked*

H **LAND LAW:** *Acquisition of land - Compensation - Award by Land Administrator - Objection to amount of compensation - Whether intervener prohibited from filing Form N pursuant to s. 38(1) Land Acquisition Act 1960 ('LAA') - Whether intervener was a person interested within meaning of s. 37(3) of the LAA - term "person interested" to be interpreted to promote purpose or object of Land Acquisition Act - Concessionaire in privatization agreement has a direct legal interest in amount of compensation payable in respect of lands acquired - Concessionaire is a person interested within meaning of s. 37(3) of the LAA*

A land reference matter arose upon the first respondent's ('Kenny Heights') objection to the quantum of compensation awarded by the second respondent ('the land administrator') for the compulsory acquisition of Kenny Heights' lands. By way of a privatization agreement between appellant ('SPRINT') and the Federal Government, SPRINT was appointed as the concessionaire of the highway to be built upon the land. Thus, by virtue of the privatization agreement, SPRINT bore the burden of paying the compensation arising out of the compulsory acquisition of Kenny Heights' lands. SPRINT sought to intervene as a party in the land reference matter and Kenny Heights objected to the application. In refusing leave to intervene, the learned High Court Judge: (i) questioned the very existence and validity of the privatization agreement and the functions of the Lembaga Lebuhraya Malaysia ("LLM"); (ii) drew an adverse inference against SPRINT for not producing the entire privatization agreement; and (iii) declined to accept SPRINT's obligations to pay the compensation pursuant to the privatization agreement. SPRINT appealed against this decision.

Held (allowing the appeal)

Per Low Hop Bing JCA (majority):

- (1) The expression "person interested", used in relation to the lands which are the subject matter of acquisition under the Act must be interpreted to promote the purpose or object of the Act *ie*, to facilitate the acquisition of land, the assessment of compensation to be made on account of such acquisition and other matters incidental thereto, in line with the purposive interpretation housed in s. 17A of the Interpretation Acts 1948 and 1967. (para 24)
- (2) Under s. 2, SPRINT being the concessionaire in the privatization agreement clearly had a direct legal interest in the amount of compensation payable in respect of the lands acquired and consequently in the land reference brought under s. 37. It had the standing to make an application to the Court and to object to the amount of the compensation under s. 37(1)(b). (para 25)

A Per Abdul Malik Ishak JCA (majority):

- (1) As a concessionaire under the privatization agreement, SPRINT had a direct legal interest in the matter of the compensation payable as a result of the acquisition of Kenny Heights' lands and should be granted leave to intervene and be allowed to lodge the necessary Form "N" under the Land Acquisition Act 1960 ("the Act") in the land reference. SPRINT fell in the category of a "person interested" within the meaning of the Act. (paras 32 & 36)
- (2) Under O. 15 r. 6(2)(b) of the Rules of the High Court 1980, SPRINT as a "person interested" should rightly be added as a party in the land reference proceedings. The rights of SPRINT under the privatization agreement to pay Kenny Heights for the acquisition of Kenny Heights' lands would directly be affected if SPRINT was not allowed to intervene. (paras 37 & 44)
- (3) The High Court judge misdirected himself when he questioned the validity of the privatization agreement. (para 55)
- (4) The High Court judge erred in law and in fact when he drew an adverse inference against SPRINT for failing to produce the privatization agreement in its entirety. Illustration (g) to s. 114 of the Evidence Act 1950 is not mandatory. It depends on the circumstances of the case. An adverse inference can only be drawn if there is withholding of evidence and not merely on account of failure to obtain evidence. The High Court judge failed to give sufficient consideration to the fact that the privatization agreement contained a confidentiality clause which prohibited the disclosure of the privatization agreement. This was not a fit and proper case for adverse inference rule to be invoked. (paras 60, 61 & 62)

Per KN Segara JCA (dissenting):

- (1) The correct prayer is that the proposed intervener be added as a co-defendant and not as 'intervener'. SPRINT cannot be added as a co-defendant in a reference to Court by the Land Administrator under the provisions of the Act. The reference is not a civil suit where the Land Administrator is the plaintiff. The documents submitted to the Court in the reference by

the Land Administrator are not “pleadings.” Intervener proceedings are therefore eminently unsuitable in a reference to court by the Land Administrator. (para 73)

- (2) The purported responsibility to pay by SPRINT was irrelevant to the restricted scope of the inquiry under s. 44 of the Act. LLM was legally and statutorily obliged to pay the compensation sum under s. 22 of the Highway Authority Malaysia (Incorporation) Act 1980. SPRINT did not at any time assert in the enquiry held before the Land Administrator that SPRINT was prepared to pay any compensation sum awarded to Kenny Heights. SPRINT did not tender any valuation report to the Land Administrator at the enquiry. Thus, the application to intervene by SPRINT in the reference to court was without merit and not sustainable. The issue in the reference was not as to which party was responsible for the payment of the compensation sum to Kenny Heights but on the question of the quantum of the compensation sum awarded to Kenny Heights. (paras 74 & 76)

Bahasa Malaysia Translation Of Headnotes

Suatu perkara rujukan tanah berbangkit atas bantahan oleh responden pertama (‘Kenny Heights’) kepada kuantum pampasan yang diaward kepada responden kedua (‘pentadbir tanah’) bagi pengambilan wajib tanah Kenny Heights. Melalui suatu perjanjian penswastaaan di antara perayu (‘SPRINT’) dan Kerajaan Persekutuan, SPRINT telah dilantik sebagai pemegang konsesi suatu lebuh raya yang akan dibina atas tanah itu. Oleh itu, oleh sebab perjanjian penswastaaan itu, SPRINT mempunyai beban membayar pampasan yang akibat daripada pengambilan wajib tanah Kenny Heights. SPRINT cuba mencelah sebagai suatu pihak dalam perkara rujukan tanah itu dan Kenny Heights membantah kepada permohonan itu. Dalam menolak kebenaran untuk mencelah, yang arif hakim Mahkamah Tinggi: (i) menyoal kewujudan dan kesahan perjanjian penswastaaan itu dan fungsi-fungsi Lembaga Lebuhraya Malaysia (‘LLM’); (ii) membuat suatu inferens bertentangan terhadap SPRINT kerana tidak mengemukakan keseluruhan perjanjian penswastaaan itu; dan (iii) enggan menerima obligasi SPRINT untuk membayar pampasan mengikuti perjanjian penswastaaan itu. SPRINT merayu terhadap keputusan ini.

A Diputuskan (membenarkan rayuan)

Low Hop Bing HMR (majoriti):

B (1) Ungkapan “seorang yang berminat”, yang digunakan
berhubungan dengan tanah-tanah yang menjadi isi pengambilan
di bawah Akta, mesti ditafsirkan untuk menggalakkan tujuan
atau matlamat Akta itu, iaitu, untuk memudahkan pengambilan
tanah, taksiran pampasan yang harus dibuat kerana
pengambilan itu dan lain-lain perkara berkaitan dengannya,
yang mengikuti pentafsiran bermaksud yang terdapat dalam
C s. 17A Akta-akta Pentafsiran 1948 dan 1967.

D (2) Di bawah s. 2, SPRINT sebagai pemegang konsesi dalam
perjanjian penswastan itu jelas mempunyai suatu kepentingan
undang-undang yang terus dalam amaun pampasan yang harus
dibayar berkenaan dengan tanah yang diambil dan seterusnya
dalam rujukan tanah yang dikemukakan di bawah s. 37. Ia
mempunyai kedudukan untuk membuat suatu permohonan
kepada Mahkamah dan untuk membantah terhadap amaun
pampasan di bawah s. 37(1)(b).

E Oleh Abdul Malik Ishak HMR (majoriti):

F (1) Sebagai pemegang konsesi di bawah perjanjian penswastan
itu, PRINT mempunyai kepentingan undang-undang terus
dalam perkara mengenai pampasan yang patut dibayar
disebabkan pengambilan tanah Kenny Heights dan seharusnya
diberi kebenaran untuk mencelah dan diberi kebenaran
membuat Borang “N” yang diperlukan di bawah Akta
Pengambilan Tanah 1960 (‘Akta’) dalam rujukan tanah itu.
SPRINT termasuk kategori “seorang yang berminat” dalam
maksud Akta itu.
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H (2) Di bawah A. 15 r. 6(2)(b) Kaedah-kaedah Mahkamah Tinggi
1980, SPRINT sebagai “seorang yang berminat” sepatutnya
ditambahkan sebagai suatu pihak dalam prosiding rujukan tanah
itu. Hak-hak SPRINT di bawah perjanjian penswastan itu
untuk membayar Kenny Heights bagi pengambilan tanah
Kenny Heights akan terjejas secara terus jika SPRINT tidak
dibenarkan mencelah.

I (3) Hakim Mahkamah Tinggi menyalaharahkan dirinya sendiri
apabila menyoal kesahan perjanjian penswastan itu.

- (4) Hakim Mahkamah Tinggi telah khilaf dalam undang-undang dan fakta apabila beliau membuat inferens bertentangan terhadap SPRINT kerana gagal mengemukakan perjanjian penswastaan itu dalam keseluruhannya. Ilustrasi (g) kepada s. 114 Akta Keterangan 1950 tidak mandatori. Ia bergantung kepada halkeadaan suatu kes. Suatu inferens bertentangan hanya boleh dibuat jika ada penyembunyian keterangan dan bukan hanya sebab ada kegagalan untuk memperolehi keterangan. Hakim Mahkamah Tinggi gagal memberi pertimbangan yang mencukupi kepada fakta bahawa perjanjian penswastaan itu mengandungi suatu klausa sulit yang melarang pendedahan perjanjian penswastaan itu. Ini bukan suatu kes yang patut dan wajar untuk menggunakan rukun inferens bertentangan.

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KN Segara HMR (menentang):

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- (1) Rayuan yang betul ialah bahawa pencilah yang dicadangkan dimasukkan sebagai satu defendan bersama dan bukan sebagai 'pencilah'. SPRINT tidak boleh ditambahkan sebagai satu defendan bersama dalam suatu rujukan kepada Mahkamah oleh Pentadbir Tanah di bawah peruntukan-peruntukan Akta. Rujukan itu bukan satu guaman sivil di mana Pentadbir Tanah ialah plaintif, Dokumen-dokumen yang diserahkan kepada Mahkamah dalam rujukan oleh Pentadbir Tanah bukan "pliding". Prosiding pencilah, oleh itu, sememangnya tidak sesuai dalam rujukan kepada Mahkamah oleh Pentadbir Tanah.
- (2) Tanggungjawab yang dimaksudkan untuk bayar oleh SPRINT tidak relevan kepada skop terhad siasatan di bawah s. 44 Akta. LLM secara undang-undang dan statutori mempunyai obligasi untuk membayar jumlah pampasan di bawah s. 22 Akta Pihak Berkuasa Lebuhraya Malaysia (Penggabungan) 1980. SPRINT tidak pada mana-mana masa menyatakan dalam siasatan yang diadakan di hadapan Pentadbir Tanah bahawa SPRINT bersedia untuk membayar apa-apa jumlah pampasan yang diaward kepada Kenny Heights. SPRINT tidak tender apa-apa laporan penilaian kepada Pentadbir Tanah di siasatan itu. Oleh itu, permohonan untuk mencelah oleh SPRINT dalam rujukan ke Mahkamah tidak mempunyai merit dan tidak boleh dibenarkan. Isu dalam rujukan itu ialah bukan tentang pihak mana yang bertanggungjawab untuk pembayaran jumlah pampasan kepada Kenny Heights tetapi atas soalan kuantum pampasan yang diaward kepada Kenny Heights.

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- A Case(s) referred to:**
Aik Ming (M) Sdn Bhd & 8 Ors v. Chang Ching Chuen & 3 Ors & Another Case [1995] 3 CLJ 639 CA (**refd**)
Ang Tun Cheong v. Lim Yeok Beng (Public Bank, Intervenor) [2002] 6 MLJ 198 (**refd**)
- B** *Arab Malaysian Merchant Bank v. Jamaludin Mohd Farjis* [1991] 2 MLJ 27 SC (**refd**)
Boston Deep Sea Fishing and Ice Company v. Ansell [1888] 39 Ch D 339 (**refd**)
Byrne And Another v. Brown [1889] 22 QBD 657 (**refd**)
Chan Kern Miang v. Kea Resources Pte Ltd [1999] 1 SLR 145 (**refd**)
- C** *Chan Min Swee v. Melawangi Sdn Bhd* [2000] 7 CLJ 1 HC (**refd**)
Chinery v. Viall [1860] 5 Hurlstone and Norman 288 (**refd**)
Damon Compania Naviera SA v. Hapag-Lloyd International SA [1985] 1 WLR 435 (**refd**)
Datuk Bandar Kuching Utara v. Kuching Plaza Sdn Bhd & Ors [2001] 2 MLJ 10 (**refd**)
- D** *Dies And Another v. British And International Mining And Finance Corporation, Limited* [1939] 1 KB 724 (**refd**)
Dr GH Grant (In all the Appeals) v. The State of Bihar (In all the Appeals) [1966] AIR SC 237 (V 53 C 52) (**refd**)
Eh Riyid v. Eh Tek [1976] 1 MLJ 262 (**refd**)
- E** *EON Bank Bhd v. Pung Chong Thai* [2001] 5 CLJ 469 HC (**refd**)
Gurtner v. Circuit [1968] 1 All ER 328 (**refd**)
Hee Awa & Ors v. Syed Muhammad Sazalay & Anor [1988] 1 MLJ 300 (**refd**)
Himalayan Tiles v. FV Coutinho [1980] AIR SC 1118 (**refd**)
- F** *Hinton v. Sparkes* [1867-68] 3 LR CP 161 (**refd**)
Hongkong & Shanghai Banking Corp, The v. Hj Salam Hj Daud (Mohd Azni Sudin, Auction Purchaser; RHB Bank Bhd, Intervenor) [2002] 4 CLJ 659 HC (**refd**)
Howe v. Smith [1884] 27 Ch D 89 (**refd**)
Hyundai Heavy Industries Co Ltd (formerly Hyundai Shipbuilding And Heavy Industries Co Ltd) v. Papadopoulos And Others [1980] 1 WLR 1129 (**refd**)
- G** *Ideal Film Ltd v. Richards & Others* [1927] 1 KB 374 (**refd**)
JC Galstaun, Objector v. Secretary of State for India In Council & Ors [1905-1906] 10 CWN 195 (**refd**)
- H** *Krishna Das Roy v. The Land Acquisition Collector of Pabna* [1911-12] 16 CWN 327 (**refd**)
KS Banerjee v. Jatindra Nath Paul and Others [1928] AIR Calcutta 475 (**refd**)
Kuala Lumpur Finance Bhd lwn. Azmi & Co Sdn Bhd dan Satu Lagi [1996] 1 MLJ 229 (**refd**)
- I** *Lau Song Seng & Ors v. Public Prosecutor* [1998] 1 SLR 663 (**refd**)
Lee Meow Lim v. Lee Meow Nyin t/a Cheong Fatt Merchant (Nabisco Brands (M) Sdn Bhd, Intervener) [1990] 3 MLJ 123 (**refd**)

- Leslie Shipping Company v. Welstead (The Raithwaite)* [1921] 3 KB 420 **A**
(refd)
- Macaura v. Northern Assurance Company, Limited, And Others* [1925] AC 619 **(refd)**
- Maclean v. Dunn and Watkins, who survived Austin* [1828] WL 2863 **(refd)**
- Magasu Sundram T Magasu & Ors v. Pentadbir Tanah Wilayah Persekutuan Kuala Lumpur* [2003] 2 CLJ 422 HC **(refd)** **B**
- Majlis Agama Islam Selangor v. Bong Boon Chuen & Ors* [2008] 6 AMR 449 **(refd)**
- Malite Sdn Bhd v. Abdul Karim Gendut & Ors* [1981] 2 MLJ 29 **(refd)**
- Martin v. London Chatham And Dover Railway Company* [1865-66] 1 Ch App 501 **(refd)** **C**
- McDonald And Another v. Dennys Lascelles Limited* [1933] 48 CLR 457 **(refd)**
- Mehar Bassa v. Collector of Lahore* [1901] 2 PLR No: 184 **(refd)**
- Menteri Besar Negeri Sembilan (Pemerbadanan) v. Pentadbir Tanah Daerah Seremban & Anor* [1995] 4 CLJ 477 CA **(refd)** **D**
- Montgomery v. Foy Morgant Co* [1895] 2 QBD 321 **(refd)**
- Moriarty v. Regent's Garage And Engineering Company, Limited* [1921] 1 KB 423 **(refd)**
- Moser v. Marsden* [1892] 1 Ch 487 **(refd)**
- Mt Gangi v. Santu and others* [1929] AIR Lahore 736 **(refd)** **E**
- Munusamy v. Public Prosecutor* [1987] 1 MLJ 492 **(refd)**
- Nite Beauty Industries Sdn Bhd & Anor v. Bayer (M) Sdn Bhd* [2000] 6 CLJ 151 HC **(refd)**
- Oppenheimer v. Minister of Transport* [1941] 3 All ER 485 **(refd)**
- Pegang Mining Ltd v. Choong Sam & Ors* [1969] 2 MLJ 52 PC **(refd)** **F**
- PP v. Guan Sheng Trading Sdn Bhd* [1996] 3 CLJ 298 HC **(refd)**
- R v. Rent Officer Service Ex P Mouldoon* [1996] 1 WLR 1103 **(refd)**
- Rajoo Selvappan & Ors v. Abdul Bhari Kader Ibrahim & Ors* [2005] 7 CLJ 326 HC **(refd)**
- Re IG Farbenindustrie AG Agreement* [1944] 1 Ch 41 **(refd)**
- Rover International Ltd And Others v. Cannon Film Sales Ltd* [1989] 1 WLR 912 **(refd)** **G**
- Sanders Lead Co Inc v. Entores Metal Brokers Ltd* [1984] 1 WLR 452 **(refd)**
- Shell Malaysia Trading Sdn Bhd v. Leong Yuet Yeng & Ors* [1990] 3 MLJ 254 **(refd)**
- Sri Permata Sdn Bhd v. PPH Realty Sdn Bhd; Lingkaran Cemerlang Sdn Bhd (Intervenors)* [2001] 7 CLJ 633 HC **(refd)** **H**
- Stein, Forbes & Co v. County Tailoring Co* [1917] 86 LJ KB 448 **(refd)**
- Stocznia Gdanska SA v. Latvian Shipping Co, Latreefers Inc And Others* [1996] 2 Lloyd's Rep 132 **(refd)**
- Sunderlal v. Paramsuladas* AIR [1968] SC 306 **(refd)**
- Swarnamanjuri Dassi v. Secy of State* [1928] AIR Calcutta 522 **(refd)** **I**
- Tai Choi Yu v. Syarikat Tingan Lumber Sdn Bhd* [1998] 4 CLJ 293 CA **(refd)**

- A** *Tajjul Ariffin Mustafa v. Heng Cheng Hong* [1993] 3 CLJ 117 SC (**refd**)
Taylor v. Laird [1856] 25 Lj Ex 329 (**refd**)
Tohtonku Sdn Bhd v. Superace (M) Sdn Bhd [1992] 2 CLJ 1153; [1992] 1 CLJ (Rep) 344 SC (**refd**)
United Malacca Rubber Estates Bhd v. Pentadbir Tanah Daerah Johor Bahru & Anor [1997] 4 MLJ 1 (**refd**)
- B** *Universiti Malaya & Anor v. Pentadbir Tanah Wilayah Persekutuan Kuala Lumpur* [2003] 2 CLJ 605 HC (**refd**)
Van Gelder v. Sowerby Bridge Society [1890] 44 Ch D 374 (**refd**)

Legislation referred to:

- C** Contracts Act 1950, s. 10(1)
Evidence Act 1950, s. 114(g)
Highway Authority Malaysia (Incorporation) Act 1980, s. 22
Interpretation Acts 1948 and 1967, s. 17A
Land Acquisition Act 1960, ss. 2, 3, 4, 8, 10, 11, 12, 14, 16, 19, 20, 22, 36(1), (2), 37(1)(b), 38(1), (5), 43, 44(1)
- D** Rules of the High Court 1980, O. 15 r. 6(2)(b)(i), (ii)

Other source(s) referred to:

Malaysian High Court Practice, 2002 Desk Edition MLJ, p 367, paras 15.6.1, 15.6.2; pp 370-390, para 15.6.9

- E** *For the appellant - Rajashree Suppiah (Paramjit Singh with him); M/s Simon Hue & Assoc*
For the 1st respondent - Joy Appukuttan; M/s SK Yeoh & Partners
For the 2nd respondent - Dato' Hj Abdul Karim Abdul Rahman; A-G's Chambers
- F** [Appeal from High Court, Kuala Lumpur; Civil Suit No: S3-15-03-2001]
[Editor's note: For the High Court judgment, please see *Kenny Heights Development Sdn Bhd v. Pentadbir Tanah Wilayah Persekutuan; Sistem Penyuraian Trafik KL Barat Sdn Bhd (Intervener)* [2007] 10 CLJ 295]
- G** Reported by Amutha Suppayah

JUDGMENT

- H** **Low Hop Bing JCA:**

Appeal

- I** [1] On 16 July 2008, by a majority decision (Nihrumala Segara a/l M.K. Pillay JCA, dissenting) we allowed the appeal by the appellant Sistem Penyuraian Trafik KL Barat Sdn. Bhd ("SPRINT") against the decision of the learned High Court judge who had

dismissed the appellant's application for leave to intervene in a land reference in which the first respondent, Kenny Heights Development Sdn. Bhd ("Kenny Heights"), had objected to the quantum of compensation awarded by the second respondent, the land administrator of the Federal Territory ("the land administrator") for compulsory acquisition of Kenny Heights' lands.

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[2] Having granted SPRINT leave to intervene, I now give my grounds.

Factual Background

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[3] Kenny Heights' lands were acquired on 17 February 2000 by the land administrator for the purpose of building the public highway known as SPRINT Highway ("the Highway").

[4] SPRINT's affidavit in support refers to and annexes the relevant portions of the privatization agreement entered into on 23 October 1997 between SPRINT and the Federal Government ("the privatization agreement") appointing SPRINT as the concessionaire of the Highway.

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[5] Pursuant to the privatization agreement, SPRINT has to bear the compensation. The compensation payable by SPRINT was also known to Kenny Heights from the outset.

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[6] Being dissatisfied with the quantum of compensation, Kenny Heights proceeded to the High Court by way of land reference.

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[7] In the land reference, SPRINT applied for leave to intervene and to lodge Form N under the Land Acquisition Act 1960. (A reference hereinafter to a section is a reference to that section in the Land Acquisition Act 1960 ("the Act"), unless otherwise stated).

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[8] The learned judge of the High Court had dismissed SPRINT's application for leave to intervene.

[9] In refusing leave to intervene, the court below:

H

(1) questioned the very existence and validity of the privatization agreement and the functions of the Highway Authority Malaysia, Lembaga Lebuhraya Malaysia ("LLM") under the Highway Authority Malaysia (Incorporation) Act 1980;

I

- A (2) drew an adverse inference against SPRINT for not producing the entire privatization agreement; and
- (3) declined to accept SPRINT's obligations to pay the compensation pursuant to the privatization agreement.

B [10] At the hearing of the appeal before us, learned senior federal counsel, Dato' Abdul Karim bin Abdul Rahman, representing the land administrator did not resist the appeal by SPRINT. However, Kenny Heights objected vehemently.

C **Legal Interest**

[11] In submitting that SPRINT has no direct legal interest in the land reference and that the learned judge of the High Court is correct in dismissing SPRINT's application for leave to intervene in the land reference, Kenny Heights' learned counsel Mr Joy W. Appukuttan relied on, *inter alia*:

- (1) *Pegang Mining Ltd v. Choong Sam & Ors* [1969] 2 MLJ 52 PC;
- (2) *Tohtonku Sdn Bhd v. Superace (M) Sdn Bhd* [1992] 2 CLJ 1153; [1992] 1 CLJ (Rep) 344 SC;
- (3) Sections 2 and 37;
- (4) *Universiti Malaya & Anor v. Pentadbir Tanah Wilayah Persekutuan Kuala Lumpur* [2003] 2 CLJ 605 HC;
- (5) *Sri Permata Sdn Bhd v. PPH Realty Sdn Bhd* [2001] 7 CLJ 633 HC;
- (6) *Tai Choi Yu v. Syarikat Tingan Lumber Sdn Bhd* [1998] 4 CLJ 293 CA;
- (7) *Menteri Besar Negeri Sembilan (Pemerbadanan) v. Pentadbir Tanah Daerah Seremban* [1995] 4 CLJ 477 CA; and
- (8) *United Malacca Rubber Estates Bhd v. Pentadbir Tanah Daerah Johor Bahru & Anor* [1997] 4 MLJ 1 HC.

[12] SPRINT's learned counsel, Ms. Rajashree Suppiah assisted by Mr. Paramjit Singh contended that being the concessionaire of the LLM, SPRINT has a direct legal interest in the compensation for the lands acquired and should be granted leave to intervene and lodge Form N in the land reference. They cited:

- (1) Order 15 r. 6(2)(b)(i) and (ii) of the Rules of the High Court 1980; A
- (2) Sections 2 and 37;
- (3) *Magasu Sundram T Magasu & Ors v. Pentadbir Tanah Wilayah Persekutuan Kuala Lumpur* [2003] 2 CLJ 422 HC; and B
- (4) *Arab Malaysian Merchant Bank v. Jamaludin bin Mohd Farjis* [1991] 2 MLJ 27 SC.

[13] In my judgment, a person may be added as a party pursuant to O. 15 r. 6(2)(b)(i) or (ii), as expressly provided in the following words: C

6 Misjoinder and non-joinder of parties (O. 15 r. 6)

- (1) ... D
- (2) At any stage of the proceedings in any cause or matter the Court may on such terms as it thinks just and either of its own motion or on application:
- (a) ... E
- (b) order any of the following persons to be added as a party, namely:
- (i) any person who ought to have been joined as a party or whose presence before the Court is necessary to ensure that all matters in dispute in the cause or matter may be effectually and completely determined and adjudicated upon, or F
- (ii) any person between whom and any party to the cause or matter there may exist a question or issue arising out of or relating to or connected with any relief or remedy claimed in the cause or matter which in the opinion of the Court it would be just and convenient to determine as between him and that party as well as between the parties to the cause or matter; G
- but no person shall be added as a plaintiff without his consent signified in writing or in such other manner as may be authorized. H

[14] In *Rajoo Selvappan & Ors v. Abdul Bhari Kader Ibrahim & Ors* [2005] 7 CLJ 326, in considering O. 15 r. 6(2) in the High Court, I took the liberty to set out the relevant general principles that have been enunciated by the courts as follows: I

- A (1) Order 15 r. 6(2) confers upon the court a wide discretion to make an order thereunder so that all matters in dispute can be effectively and completely determined and adjudicated upon: *Kuala Lumpur Finance Bhd lwn. Azmi & Co Sdn Bhd dan Satu Lagi* [1996] 1 MLJ 229; and *Malaysian High Court Practice* (2002 Desk Edition, MLJ) p. 367 para 15.6.1;
- B
- C (2) An application under O. 15 r. 6(2) may be made at any stage of the proceedings but before final judgment: *Shell Malaysia Trading Sdn Bhd v. Leong Yuet Yeng & Ors* [1990] 3 MLJ 254; *Tai Choi Yu, supra*; *Nite Beauty Industries Sdn Bhd & Anor v. Bayer (M) Sdn Bhd* [2000] 6 CLJ 151; and *Malaysian High Court Practice*, p. 367 para 15.6.2.
- D (3) There is no requirement to obtain the consent of the party intended to be added as a defendant before adding him: *Datuk Bandar Kuching Utara v. Kuching Plaza Sdn. Bhd & Ors* [2001] 2 MLJ 10, 15; and *Malaysian High Court Practice*, p. 370-390 para 15.6.9; and
- E (4) Often the court will make such changes as may be necessary to enable all matters in dispute to be effectually and completely determined and adjudicated upon: *Van Gelder v. Sowerby Bridge Society* [1890] 44 Ch D 374; *Montgomery v. Foy* [1895] 2 QBD 321; *Ideal Film Ltd v. Richards* [1927] 1 KB 374; *Malite Sdn Bhd*; and *Malaysian High Court Practice*, p. 367 para 15.6.3.
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- G [15] With particular reference to O. 15 r. 6(2)(b)(i) or (ii), the test for the grant or refusal of leave to intervene is whether a person's "legal interest", and not merely his commercial interest, would be affected. The question is: will a person's rights against or liabilities to any party to the action in respect of the subject matter of the action be directly affected by an order which may be made in the action? (See *Pegang Mining Co. Ltd, supra*, at p. 56 per Lord Diplock; and *Tohtonku Sdn Bhd, supra* at p. 65, per Mohamed Yusoff SCJ (as he then was)).
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- I [16] In *Gurtner v. Circuit* [1968] 1 All ER 328, the English Court of Appeal had widened the ambit to include any case in which the intervener is directly affected not only in his legal rights but in his pocket in that he will be bound to foot the bill. In such a case, the court in the exercise of discretion may allow him to be added as a party on such terms as it thinks fit. By so doing, the court

achieves the object of the rule. It enables all matters to dispute to be effectually and completely determined and adjudicated upon between all those directly concerned in the outcome.

[17] In *Arab Malaysia Merchant Bank Berhad, supra*, the Supreme Court considered O. 15 r. 6(2)(b)(ii) in an application for leave to intervene. Gunn Chit Tuan SCJ (later CJ (M)) speaking for the court held at p. 28 that this rule allows intervention where the proprietary or pecuniary rights of the intervener are directly affected by the proceedings or where the intervener may be rendered liable to satisfy any judgment either directly or indirectly.

[18] By the process of elimination:

- (1) A person cannot be directly affected by an order of the court if such affection is brought about by an intermediary or the intervention of an intermediate agency: see *Sri Permata Sdn. Bhd, supra*, per Abdull Hamid Embong J (now JCA), at p. 558 E-H, applying *Stroud's Judicial Dictionary of Words and Phrases* (6th edn) and *R v. Rent Officer Service Ex. P. Mouldoon* [1996] 1 WLR 1103 HL per Lord Keith of Kinkel;
- (2) A mere shareholder, *a fortiori*, a minority shareholder, has no legal interest directly in the property of the company: *Tai Choi Yu, supra*, at p. 278 D-E, H; and
- (3) A statutory corporation established with the power to undertake ventures of a commercial or industrial nature was held by the High Court and the Court of Appeal not to be a person interested in the scheduled land under the Land Acquisition Act 1960, as the proposed acquisition was for a public purpose, thereby ruling out the involvement of the corporation on whose behalf the scheduled land was acquired by the state authority: *Menteri Besar Negeri Sembilan (Perbadanan), supra*.

[19] However, in specific situations where compensation for the acquisition of land is to be paid by the party for whom the land was acquired, our courts have held that legal interest has certainly been established. By way of illustration:

- (1) In *Universiti Malaya, supra*, LLM had filed Form N and objected to the amount of compensation awarded by the land administrator in relation to the acquisition of the lands owned by Universiti Malaya (UM). UM resisted the filing of Form N

- A by LLM and applied to strike out or dismiss Form N on the
ground that LLM was precluded or stopped from filing Form
N under s. 37, because LLM had failed to submit the
valuation at the inquiry under s. 12. Abdul Hamid Said J (as
he then was) at p. 191H, held, *inter alia*, that the acquisition
B of the land was for LLM and LLM had to pay for the same,
in which case LLM definitely had a say in the finding of the
land administrator. Hence, UM's application to strike out or
dismiss Form N was refused. This judgment is supportive of
SPRINT and militates against Kenny Heights;
- C (2) In *United Malacca Rubber Estates Ltd, supra*, the plaintiff's
scheduled land was acquired by the state authority on behalf
of United Engineering (M) Bhd (UEM), for the purposes of
the second Malaysia-Singapore causeway project. The land
administrator awarded compensation in the sum of RM123,688.
D UEM's objection to the compensation was referred to the
court for determination. Meanwhile, the plaintiff filed an action
in the High Court against the land administrator and UEM,
praying for declarations, *inter alia*, that UEM had no standing
E and was not entitled to lodge the objection against the
compensation. Payment for the costs of acquisition was to be
made by UEM. In dismissing the plaintiff's action, Mohd
Ghazali J (now JCA) rejected the plaintiff's contention that
F UEM was not a "person interested". Being a "person
interested", UEM certainly has the standing to object to the
amount of compensation awarded.
- G [20] In *Magasu Sundram T Magasu Ors v. Pentadbir Tanah Wilayah
Persekutuan Kuala Lumpur* [2003] 2 CLJ 422, Azmel Maamor J
(later FCJ) had to interpret the words "person interested". His
Lordship applied two judgments of the Indian Supreme Court *viz:*
Sunderlal v. Paramsuladas AIR [1968] SC 306, where it was held
that a person becomes a person interested if he claims an interest
in the compensation to be awarded, and *Himalayan Tiles v. F.V.*
H *Coutinho* [1980] AIR SC 1118 which held that the definition of
the term is an inconclusive one and must be liberally construed to
embrace all persons who may be directly or indirectly interested
either in the title of the land or in the question of compensation.
The conclusion is that a person can be said to be a person
I interested if he has an interest in the land either directly or
indirectly or if has an interest in the compensation in respect of
the land acquired.

[21] The *ratio* in *Magasu Sundram, supra*, is entirely consistent with the definition of a “person interested” in s. 2 as amended *vide* Act A999/97 which came into force on 1 March 1998. Section 2 has now made the position absolutely clear. Where relevant, it defines a “person interested” as including “every person claiming an interest in the compensation to be made on account of the acquisition of land under this Act”.

[22] Further s. 37(1)(b) expressly provides for an interested person to make an objection to the land administrator’s award of compensation, particularly on the amount thereof. It reads as follows:

37. Application to Court.

(1) Any person interested in any scheduled land who, pursuant to any notice under s. 10 or 11, has made a claim to the Land Administrator in due time and who has not accepted the Land Administrator’s award thereon, or has accepted payment of the amount of such award under protest as to the sufficiency thereof, may, subject to this section, make objection to:

(a) ...;

(b) the amount of the compensation;

(c) ...; and

(d) ...

[23] It is therefore abundantly clear that the intention expressed in s. 37(1)(b) is to enable any person interested in any scheduled land to make an application to the court, objecting to the amount of the compensation.

[24] In my view, the expression “person interested”, used in relation to the lands which are the subject matter of acquisition under the Act, must be interpreted to promote the purpose or object of the Act ie to facilitate the acquisition of land, the assessment of compensation to be made on account of such acquisition and other matters incidental thereto, in line with the purposive interpretation housed in s. 17A of the Interpretation Acts 1948 and 1967 which reads as follows:

A Regard to be had to the purpose of Act

17A. In the interpretation of a provision of an Act, a construction that would promote the purpose or object underlying the Act (whether that purpose or object is expressly stated in the Act or not) shall be preferred to a construction that would not promote that purpose or object.

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[25] Under s. 2, SPRINT being the concessionaire in the privatization agreement clearly has a direct legal interest in the amount of compensation payable in respect of the lands acquired pursuant to the Act for the purpose of the Highway which is a public utility and consequently in the land reference brought under s. 37 in respect of the lands. It has the standing to make an application to the court and to object to the amount of the compensation under s. 37(1)(b).

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[26] In the circumstances, learned judge's grounds of refusal enumerated above constituted serious misdirections warranting appellate interference.

E Conclusion

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[27] On the foregoing grounds, I allowed the appeal by the appellant, with costs here and in the court below; set aside the decision of the High Court; and granted leave to the appellant to intervene and to file Form N in the land reference. Deposit to be refunded to SPRINT (the appellant).

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Abdul Malik Ishak JCA

Introduction

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[28] This was an appeal by the appellant – Sistem Penyuraian Trafik KL Barat Sdn Bhd (hereinafter referred to as “SPRINT”), against the decision of the High Court judge who disallowed SPRINT's application to intervene in a land reference matter which arose upon the first respondent's – Kenny Heights Development Sdn Bhd (hereinafter referred to as “Kenny Heights”), objection to the quantum of compensation awarded by the second respondent – Pentadbir Tanah Wilayah Persekutuan, Kuala Lumpur (hereinafter referred to as “the land administrator”), for the compulsory acquisition of Kenny Heights' lands.

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[29] By way of a privatization agreement dated 23 October 1997 between SPRINT and the Federal Government, SPRINT was appointed as the concessionaire of the Highway. This meant that SPRINT, by virtue of the privatization agreement, bears the burden of paying the compensation arising out of the compulsory acquisition of Kenny Heights' lands. It must be borne in mind that Kenny Heights knew, from the outset, that the compensation has to be paid by SPRINT. Thus, it was not surprising that SPRINT sought to intervene as a party. Kenny Heights objected to SPRINT's application to intervene while the land administrator supported it.

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Analysis

[30] The High Court judge refused to recognise the privatization agreement notwithstanding the fact that all the affidavits alluded to the existence of the privatization agreement.

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[31] Under clause 6.3.1 of the privatization agreement, SPRINT was legally obliged to bear the costs of any land acquired for the purposes of the construction of the highway project and thus SPRINT can be said to be a person interested in the compensation payable upon such acquisition.

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[32] As a concessionaire under the privatization agreement, SPRINT has a direct legal interest in the matter of the compensation payable to Kenny Heights as a result of the acquisition of Kenny Heights' lands and should be granted leave to intervene and be allowed to lodge the necessary Form "N" under the Land Acquisition Act 1960 in the land reference.

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[33] SPRINT was, in fact, a "person interested" in the compensation payable to Kenny Heights. Section 2 of the Land Acquisition Act 1960 defines a "person interested" to include:

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every person claiming an interest in compensation to be made on account of the acquisition of land under this Act, but does not include a tenant ... at will.

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[34] It is my considered view, based on the authorities, that this definition is not intended to be exhaustive. Any person claiming an interest in compensation does not mean that the claim must be a valid claim. It is the duty of the Land Administrator to scrutinise at every claim and in the event he is uncertain whether the claim

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A is valid or otherwise he may by virtue of s. 36(2) of the Land Acquisition Act 1960 refer the matter to the High Court for its determination.

B [35] It is appropriate, at this juncture, to itemise the different categories of persons interested under the Land Acquisition Act 1960. I shall do so now:

C (a) A company, whether corporate or incorporate, could be a person interested in accordance with the meaning ascribed to the word “person” in the Interpretation Acts 1948 and 1967 – Consolidated and Revised 1989, Reprint 2000.

D (b) According to the case of *Krishna Das Roy v. The Land Acquisition Collector of Pabna* [1911-12] 16 CWN 327, an owner of the subject land is a person interested. The same recognition is also given to a mortgagee (*Martin v. London Chatham And Dover Railway Company* [1865-66] 1 Ch App 501). And a lessee with a fixed term is also said to be a person interested (*Mehar Bassa v. Collector of Lahore* [1901] 2 PLR No: 184; and *Swarnamanjuri Dassi v. Secy. of State* [1928] AIR Calcutta 522).
E So too would a reversioner be accorded the same status (*Mt. Gangi v. Santu and others* [1929] AIR Lahore 736).

F (c) A person who has entered into a contract to purchase a piece of land which is a subject of compulsory acquisition is a person interested because he is said to be the beneficial owner (*J.C. Galstaun, Objector v. Secretary of State for India In Council & Ors.* [1905-1906] 10 CWN 195). Likewise, the other party to the contract is also considered as a person interested (*Dr. G. H. Grant (In all the Appeals) v. The State of Bihar (In all the Appeals)* [1966] AIR SC 237 (V 53 C 52)).
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(d) According to *Oppenheimer v. Minister of Transport* [1941] 3 All ER 485, an option holder has an interest in the land and that makes him a person interested.

H (e) According to *K. S. Banerjee v. Jatindra Nath Paul and Others* [1928] AIR Calcutta 475, where a trust proper has been acquired by the government, those persons having legal and equitable interests in the acquired property are classified as persons interested.
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[36] These are some of the personalities that can be said to be persons interested under the Land Acquisition Act 1960 and the list is not exhaustive nor is it closed. SPRINT would definitely fall in the category of a “person interested” within the meaning of the Land Acquisition Act 1960.

[37] According to O. 15 r. 6(2) of the Rules of the High Court 1980 (“RHC”), there is no time limit for SPRINT to intervene but the authorities which I will allude to in due course would show otherwise. However, one thing is certain. It is this. That under O. 15 r. 6(2)(b) of the RHC, SPRINT as a “person interested” should rightly be added as a party in the land reference proceedings.

[38] Order 15 r. 6(2)(b)(i), (ii) of the RHC states as follows:

6 Misjoinder and non-joinder of parties (O. 15 r. 6)

(2) At any stage of the proceedings in any cause or matter the Court may on such terms as it thinks just and either of its own motion or on application:

(b) order any of the following persons to be added as a party, namely:

(i) any person who ought to have been joined as a party or whose presence before the Court is necessary to ensure that all matters in dispute in the cause or matter may be effectually and completely determined and adjudicated upon, or

(ii) any person between whom and any party to the cause or matter there may exist a question or issue arising out of or relating to or connected with any relief or remedy claimed in the cause or matter which in the opinion of the Court it would be just and convenient to determine as between him and that party as well as between the parties to the cause or matter; but no person shall be added as a plaintiff without his consent signified in writing or in such other manner as may be authorized.

[39] It is quite obvious that the main object of O. 15 r. 6(2) of the RHC is to prevent a multiplicity of proceedings. This court is vested with a wide discretion to make an order so that all matters in dispute can be effectually and completely determined and adjudicated upon (*Kuala Lumpur Finance Bhd v. Azmi Co Sdn Bhd dan Satu Lagi* [1996] 4 MLJ 650).

- A [40] In the context of an intervention in a judicial review proceeding, I had this to say in *Majlis Agama Islam Selangor v. Bong Boon Chuen & 150 Ors* [2008] 6 AMR 449 at 473; [2008] 6 MLJ 488 at 515:
- B [91] The court has a broader and wider discretion to allow intervention under Order 15 r. 6(2)(b)(ii) of the RHC. It is comforting to know that there is such a provision in the RHC. It makes sense to have such an enabling provision because sometimes a joinder of a person may not be strictly necessary but it may be convenient and must therefore be just to allow such a
- C joinder.
- D [92] The need for more flexibility is shown in the case of *Vandervell Trustees Ltd v. White & Ors* [1971] AC 912, HL. That case concerned a dispute between trustees and executors in respect of the ownership of certain trust assets. The Inland Revenue was concerned in the matter because it had made a tax assessment concerning the trust assets which was related to the issue of their ownership. Allowing the joinder of the Inland Revenue, Lord Reid had this to say at pp 929 to 930:
- E I find this so strange as to be inexplicable if it is not competent to make a rule of court bringing in the revenue and so preventing the same issue from being raised again before the special commissioners.
- F [93] Buckley J in *Tetra Molelectric Ltd v. Japan Imports Ltd* [1976] RPC 541 had this to say in regard to paragraph (b)(ii) of r. 6(2) of Order 15 of the RSC:
- G it widens the discretion of the court to a great extent, for now the court may add any person ... if the question or issue involved is one which in the opinion of the court it would be just and convenient to determine as between the applicant and the present party ... as well as between the parties to the proceedings themselves.
- H [94] So long as it is 'just and convenient', and it is so in this appeal, it would be appropriate to add MAIS as a party to the judicial review proceedings.
- I [41] The court retains a discretionary power to refuse an application to intervene. In *Chan Kern Miang v. Kea Resources Pte Ltd* [1999] 1 SLR 145, CA, for instance, the court refused the application of the defendant to add another party as a defendant because that party had been sued separately by the plaintiff

previously and a settlement agreement had been reached in that case which barred the plaintiff from claiming any further reliefs from that party.

[42] In an action for breach of contract and misrepresentation where the plaintiff had already assigned his rights under the contract to a bank, I had while sitting on the High Court bench in *Chan Min Swee v. Melawangi Sdn Bhd* [2000] 7 CLJ 1, ordered a stay of the proceedings to allow the plaintiff to include the assignee bank as a party to the action simply because both the plaintiff and the bank had rights in the chose in action via the assignment and I too held that the court would not be in a position to decide the issue in the absence of the bank as any decision on the issue would not bind the bank. Here, we have exercised, by way of majority, our discretion by allowing SPRINT to intervene.

[43] The case of *Hee Awa & Ors. v. Syed Muhammad Sazalay & Anor* [1988] 1 MLJ 300 accepted the test laid down by the case of *Pegang Mining Co. Ltd. v. Choong Sam & Ors.* [1969] 2 MLJ 52, PC in determining whether a person ought to be added as a party to the action. And the test is as follows (see p. 56 of *Pegang Mining*):

will his rights against or liabilities to any party to the action in respect of the subject matter of the action be directly affected by any order which may be made in the action?

[44] Here, the rights of SPRINT under the privatization agreement to pay Kenny Heights for the acquisition of Kenny Heights' lands would directly be affected if SPRINT was not allowed to intervene.

[45] Having considered the relevant authorities, I am of the opinion that the following propositions may be taken as well settled.

[46] Firstly, that the phrase "at any stage of the proceedings" appearing in O. 15 r. 6(2) of the RHC means at any stage before the final order is made and not after it has been perfected and extracted (*Hongkong & Shanghai Banking Corp, The v. Hj Salam bin Hj Daud (Mohd Azni bin Sudin, Auction Purchaser; RHB Bank Bhd, Intervenor)* [2002] 4 CLJ 659).

A [47] Secondly, the court has all along been magnanimous in allowing an applicant who has an interest in the subject matter the right to intervene even after final judgment has been entered (*EON Bank Bhd v. Pung Chong Thai* [2001] 5 CLJ 469; and *Ang Tun Cheong v. Lim Yeok Beng (Public Bank, Intervenor)* [2002] 6 MLJ 198).

B [48] Thirdly, if the addition of new parties may cause fresh expense and necessitates new evidence, the court would still entertain such an application (*Byrne And Another v. Brown* [1889] 22 QBD 657, CA) so that all matters in dispute may be effectually and completely determined and adjudicated upon (*Van Gelder, Apsimon & Co. v. Sowerby Bridge United District Flour Society* [1890] 44 Ch. D 374, CA; *Montgomery v. Foy, Morgan & Co.* [1895] 2 QB 321, CA; and *Ideal Films, Limited v. Richards And Others* [1927] 1 KB 374, CA).

[49] Fourthly, for intervention to be legitimate it must fulfill the conditions prescribed by O. 15 r. 6(2)(b)(i) or (ii) of the RHC.

E [50] Fifthly, the Privy Council in *Pegang Mining Co. Ltd. v. Choong Sam & Ors.* (*supra*) demonstrates the wide powers of the court in dealing with an application to intervene, like the one before us now. There, Lord Diplock at p. 55 aptly said:

F The cases illustrate the great variety of circumstances in which it may be sought to join an additional party to an existing action. In their Lordships' view one of the principal objects of the rule is to enable the court to prevent injustice being done to a person whose rights will be affected by its judgment by proceeding to adjudicate upon the matter in dispute in the action without his being given an opportunity of being heard. To achieve this object

G calls for a flexibility of approach which makes it undesirable in the present case, in which the facts are unique, to attempt to lay down any general proposition which could be applicable to all cases.

H [51] Sixthly, our Supreme Court dutifully followed *Pegang Mining in Arab Malaysian Merchant Bank Bhd v. Jamaludin bin Dato Mohd Farjis* [1991] 2 MLJ 27 and held that there must be a flexibility of approach in construing O. 15 r. 6(2)(b)(i) or (ii) of the RHC.

I [52] Seventhly, a party may be added if his legal interest will be affected by the judgment in the action but he will not be added as a party when his commercial interest only would be affected (*Moser v. Marsden* [1892] 1 Ch. 487; In *Re I.G. Farbenindustrie*

A.G. Agreement [1944] 1 Ch. 41; *Sanders Lead Co. Inc. v. Entores Metal Brokers Ltd.* [1984] 1 WLR 452, CA; *Tohtonku Sdn Bhd v. Superace (M) Sdn Bhd* [1992] 2 CLJ 1153; [1992] 1 CLJ (Rep) 344; *Lee Meow Lim v. Lee Meow Nyin t/a Cheong Fatt Merchant (Nabisco Brands (M) Sdn Bhd, Intervener)* [1990] 3 MLJ 123; and *Eh Riyid v. Eh Tek* [1976] 1 MLJ 262). A
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[53] Eighthly, that a mere shareholder, *a fortiori*, a minority shareholder has no interest, legal or equitable, in the property of a company and has no right to intervene (*Macaura v. Northern Assurance Company, Limited, And Others* [1925] AC 619, HL, at p. 626). C

[54] Ninthly, the objects of O. 15 r. 6(2)(b) of the RHC may be stated as follows:

(i) “to prevent multiplicity of actions and to enable the court to determine disputes between all parties to them in one action” (*Malite Sdn. Bhd. v. Abdul Karim bin Gendut & Ors.* [1981] 2 MLJ 29); and D

(ii) “to prevent the same or substantially the same questions or issues being tried twice with possibly different results” (*Tajjul Ariffin bin Mustafa v. Heng Cheng Hong* [1993] 3 CLJ 117). E

[55] Reverting back to the factual matrix of the case, I must categorically say that the High Court judge misdirected himself when he questioned the validity of the privatization agreement notwithstanding the fact that the existence of that agreement completes the whole picture on how the Highway Authority (“LLM”) under the Highway Authority Malaysia (Incorporation) Act 1980 acquires the scheduled land for the purpose of the public highway without the Federal Government expending its own fund. F
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[56] LLM as the representative of the Federal Government did not dispute the existence of the privatization agreement nor did it dispute SPRINT’s obligation to pay the compensation to Kenny Heights. All these have amply been set out in the additional affidavit of Md. Sani bin Dawam that was affirmed on 3 August 2001. His additional affidavit confirmed that LLM was merely a conduit for the payment of the compensation which was payable by SPRINT and that the legal interest of SPRINT was a direct H
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- A interest arising from its actual legal obligation under the privatization agreement notwithstanding s. 22 of the Highway Authority Malaysia (Incorporation) Act 1980.

- B [57] Obligations under the privatization agreement cannot be ignored. They constitute a contract where the obligations are capable of being enforced or recognised under the law. They are based on the agreement of the contracting parties. Section 10(1) of the Contracts Act 1950 enacts as follows:

C **What agreements are contracts**

10. (1) All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void.
- D [58] A contract is nothing more than an instrument by which the separate and conflicting interests of the parties have been reconciled and brought to a common goal. It sets out the respective responsibilities of the parties and the standard of performance to be expected of the parties. It allows the economic risks involved in the transaction to be identified in advance between the parties. And it may also provide for contingencies, for example, what is to happen if things go wrong. In other words, the purpose of a contract is to facilitate forward planning of the transaction and to make the necessary provision for future contingencies (*Stein, Forbes & Co. v. County Tailoring Co.* [1917] 86 LJ KB 448; *Maclean v. Dunn and Watkins, who survived Austin* [1828] WL 2863 (CCP), [1828] 4 Bingham New Cases 722, 130 ER 947; *Howe v. Smith* [1884] 27 Ch. D 89, CA; *Leslie Shipping Company v. Welstead (The Raithwaite)* [1921] 3 KB 420; *Hyundai Heavy Industries Co. Ltd. (formerly Hyundai Shipbuilding And Heavy Industries Co. Ltd.) v. Papadopoulos And Others* [1980] 1 WLR 1129, HL; *Stocznia Gdanska S.A. v. Latvian Shipping Co., Latreefers Inc. And Others* [1996] 2 Lloyd's Rep 132, CA; *Dies And Another v. British And International Mining And Finance Corporation, Limited* [1939] 1 KB 724; *McDonald And Another v. Dennys Lascelles Limited* [1933] 48 CLR 457 at p. 477; *Chinery v. Viall* [1860] 5 Hurlstone and Norman 288; *Hinton v. Sparkes* [1867-68] 3 LR CP 161 at p. 166; *Damon Compania Naviera S.A. v. Hapag-Lloyd International S.A.* [1985] 1 WLR 435, CA, at p. 451; *Rover International Ltd. And Others v. Cannon Film Sales Ltd.* [1989] 1

WLR 912, CA, at p. 924; *Taylor v. Laird* [1856] 25 LJ Ex. 329, [1856] 1 Hurlstone and Norman 266; *Boston Deep Sea Fishing and Ice Company v. Ansell* [1888] 39 Ch. D 339, CA; and *Moriarty v. Regent's Garage And Engineering Company, Limited* [1921] 1 KB 423).

[59] Seen in this context, the privatization agreement must be adhered to and we, accordingly, by way of majority, give effect to it.

[60] Next, the High Court judge erred in law and in fact when he drew an adverse inference against SPRINT for failing to produce the privatization agreement in its entirety. Illustration (g) to s. 114 of the Evidence Act 1950 states that the court may presume that evidence which could be and is not produced would if produced be unfavourable to the person who withholds it. But, the illustration is not mandatory. It depends on the circumstances of the case, and, in a criminal case, for instance, the materiality of the witnesses not produced may activate the adverse inference rule (*Lau Song Seng & Ors v. Public Prosecutor* [1998] 1 SLR 663, CA; *Munusamy v. Public Prosecutor* [1987] 1 MLJ 492, SC). While sitting on the High Court bench in the case of *Public Prosecutor v. Guan Sheng Trading Sdn Bhd* [1996] 3 CLJ 298, I said that an adverse inference can only be drawn if there was withholding of evidence and not merely on account of failure to obtain evidence.

[61] Here, the High Court judge failed to give sufficient and/or any consideration to the following facts:

- (a) that the privatization agreement contained a confidentiality clause which prohibited the disclosure of the Privatization agreement and notwithstanding this prohibition, some parts of the Privatization Agreement were produced as can be seen at pp. 420 to 441 of the appeal record;
- (b) that clause 33.1 of the privatization agreement as seen at p. 440 of the appeal record carried the confidentiality clause worded in this way:

33.1 Confidentiality

This Agreement and all matters pertaining hereto shall be considered a confidential matter and shall not be disclosed to any third party without prior mutual agreement (which agreement shall not be unreasonably withheld) unless the same is required by law.

A (c) that the letter from the Ministry of Works addressed to SPRINT dated 8 September 2003 spoke of the confidentiality in this way (see pp. 346 to 347 of the appeal record):

B 2. Dimaklumkan bahawa memandangkan klausa 'confidentiality' dalam Perjanjian Penswastaan bertarikh 23hb. Oktober 1997 (seterusnya dikenali sebagai 'Perjanjian Penswastaan' tersebut) tidak membenarkan isi kandungan Perjanjian Penswastaan tersebut didedahkan (disclose) kepada mana-mana pihak, pihak kami hanya dapat mengesahkan bahawa Sistem Penyuraian Trafik KL Barat Sdn Bhd (seterusnya dikenali sebagai 'Syarikat Konsesi') telah diberikan konsesi oleh Kerajaan untuk mereka, membina dan menguruskan lebuhraya yang dikenali sebagai 'Lebuhraya SPRINT'.

D 3. Pihak kami juga mengesahkan bahawa di bawah terma Perjanjian Penswastaan tersebut, semua kos yang terlibat dalam pengambilanbalik tanah untuk Lebuhraya SPRINT adalah ditanggung sepenuhnya oleh Syarikat Konsesi.

E (d) that SPRINT had in fact requested the permission of the Ministry of Works to disclose the relevant parts of the privatization agreement as reflected in the letter dated 8 June 2004 from the Ministry of Works to SPRINT as seen at p. 378 of the appeal record and that letter was worded in this way:

F **Per: Perjanjian Penswastaan Bertarikh 23hb. Oktober 1997**

Mahkamah Tinggi Kuala Lumpur

No: S3-15-03-01

G Kenny Heights Development Sdn Bhd lwn.
Pentadbir Tanah Wilayah Persekutuan

Dengan hormatnya saya merujuk kepada perkara di atas dan surat kami bertarikh 30 April 2004.

H 2. Permohonan tuan untuk mengemukakan klausa-klausa yang disebut itu iaitu:

- I
1. Muka Surat depan
 2. Kesemua recital A, B dan C
 3. Klausa 1.1
 4. Kesemua Klausa 2
 5. Kesemua Klausa 6

6. Kesemua Klausula 27 A
7. Klausula 33.1
8. Muka surat tandatangan kedua-dua pihak
- bagi tujuan kes Mahkamah berkenaan dibenarkan.
3. Walau bagaimanapun kebenaran ini diberi dengan syarat B
tuan hendaklah membuat akujanji untuk mempergunakannya
hanya untuk kes tersebut di atas sahaja dan bukan untuk
kegunaan lain-lain kes atau lain-lain perkara.
- (e) that the parts of the privatization agreement disclosed by C
SPRINT with the consent of Ministry of Works to the court
by way of affidavits contained the specific clauses on
SPRINT's obligation in respect of the land acquisitions and its
obligation to bear the costs of such acquisitions and/or pay D
the necessary compensation and that there was therefore
sufficient material before the court to enable it to exercise its
powers under O. 15 r. 6(2)(b) of the RHC; and
- (f) that the Ministry of Works had initially denied permission to E
SPRINT to disclose the privatization agreement and had
thereafter agreed to allow selected clauses of the privatization
agreement to be disclosed upon further requests by SPRINT
and, consequently, SPRINT was constrained from producing
the privatization agreement in its entirety by extraneous factors F
beyond its control.
- [62] For these varied reasons, we hold, by way of majority, that
in all the circumstances, this was not a fit and proper case for
adverse inference rule to be invoked against SPRINT.
- Conclusion** G
- [63] I have had the advantage of reading the judgment in draft
of my learned brother Low Hop Bing, JCA and I agree with what
his Lordship has said. I too agree with all the orders made by his
Lordship and I too make those orders which we have made, by H
way of majority, in open court.

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A KN Segara

Dissenting

- B** [64] A land reference proceedings was pending before the High Court Kuala Lumpur consequent upon the written application in Form N to the Land Administrator pursuant to s. 38(1) Land Acquisition Act 1960 (LAA 1960) made by the registered owners of the scheduled land, Kenny Heights Development Sdn Bhd, objecting to the amount of compensation awarded by the Land Administrator. Sistem Penyuraian Trafik KL Barat Sdn Bhd applied
- C** under O. 15 Rules Of The High Court 1980 to intervene in the said land reference proceedings. The learned High Court judge dismissed the application by Sistem Penyuraian Trafik KL Barat Sdn Bhd.
- D** [65] The LAA 1960 is a special Act relating to the acquisition of land, the assessment of compensation to be made on account of such acquisition and other matters incidental thereto. A reference to court under the provisions of the LAA 1960 can only be made by the Land Administrator. This is spelt out in unequivocal terms
- E** in s. 36(1) LAA 1960. Section 37 of the said Act sets out that any person interested in any scheduled land who has made a claim to the Land Administrator in due time may make objections, subject to the provisions in the section, *inter alia*, to the amount of the compensation. The manner and time within which the
- F** objection is to be made is strictly governed by s. 38 LAA 1960. It must be made by way of a written application in Form N to the Land Administrator requiring that he refer the matter to the court for its determination. Section 38 LAA 1960 is very comprehensive, setting out time frames for the reference to be
- G** made to the court and even covers the situation when the Land Administrator fails to make a reference to court within the period specified after an objection has been made. Section 43 LAA 1960 makes it mandatory for the court, upon receiving a reference from the Land Administrator pursuant to s. 38(5), to cause a notice in
- H** Form P, specifying the date on which the court will proceed to hear and determine the objection contained in such reference, to be served on the following:
- (a) the applicant;
- I** (b) the person or corporation, if any, on whose behalf the proceedings were instituted pursuant to s. 3;

(c) all persons interested in the objection, except such, if any, as have consented without protest to receive payment of the compensation awarded; and A

(d) if the objection is in regard to the area of the land or the amount of the compensation, the Land Administrator. B

[66] It cannot be over-emphasized that the scope of an inquiry by the court in a reference under the LAA 1960 is very much limited to a consideration only of the interests of the persons affected by the objection. This is abundantly clear from s. 44(1) which reads: C

(1) In every proceeding under this Part the scope of the inquiry shall be restricted to a consideration of the interests of the persons affected by the objection.

[67] In this appeal, the 1st respondent, Kenny Heights Development Sdn Bhd (hereinafter referred to as “Kenny Heights”) is the registered owner of that parcels of land held under title particulars Grant 5357 Lot No.21759, Grant 5358 Lot No. 21760, Grant 5359 Lot No. 21761, Grant 5360 Lot No. 21762 and Grant 5361 Lot No.21763 all in Mukim Batu Daerah Wilayah Persekutuan (collectively referred to as “land”). D E

[68] The 2nd respondent (hereinafter referred to as “Land Administrator”) acquired part of Kenny Heights’ Land (hereinafter referred to as the “affected land”) under the provisions of the LAA 1960 for and on behalf of the Lembaga Lebuhraya Malaysia (Highway Authority Malaysia) (hereinafter referred to as “LLM”). F

[69] The Land Administrator awarded Kenny Heights the sum of RM21,553,003.84 (“compensation sum”) through Form G and H, dated 19 June 2000 and 21 June 2000 respectively, for the acquisition of the affected land. Kenny Heights accepted the offer under protest. LLM paid the compensation sum to Kenny Heights. G

[70] Kenny Heights was dissatisfied with the compensation sum and filed its objection in Form N on 10 July 2000 and hence the reference to the High Court. H

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- A [71] The appellant, Sistem Penyuraian Trafik KL Barat Sdn Bhd (hereinafter referred to as “SPRINT”) by summons in chambers dated 25 May 2001 applied for leave, *inter alia*, to intervene. SPRINT failed to identify the capacity in which it intends to intervene. This court in *Aik Ming (M) Sdn Bhd & 8 Ors v. Chang*
B *Ching Chuen & 3 Ors & Another Case* [1995] 3 CLJ 639 CA has advised litigants on the procedure to be adopted when an intervener application is to be made. The correct prayer is that the proposed intervener be added as a co-defendant and not as ‘intervener’. Further directions are also to be made on the
C pleadings by the parties, including an order that the plaintiff do plead its case against the added co-defendant. This is how it was expressed in *Aik Ming*:

- D In any event, when the application came to be made, there ought to have been a prayer in the summons asking for an order that the intervener be added as a co-defendant and for directions on the delivery of pleadings by the parties, including a direction requiring the plaintiffs to plead their case against the added co-defendant.

- E [72] The principles of law applicable to intervener applications was laid down by the Supreme Court in *Tajjul Ariffin bin Mustafa v. Heng Cheng Hong* [1993] 2 MLJ 143 at p 151. I wish only to reiterate here the first of the six principles, *viz*:

- F (1) The principle of overriding importance is that all necessary parties, but no others should be before the court at the same time to enable the effectual and complete determination and adjudication to be made by the court of all questions and issues between the parties which arise for decision (See O. 15 r. 4 and 6 of the RHC).

- G [73] It is patently clear that SPRINT cannot be added as a co-defendant in a reference to court by the Land Administrator under the provisions of the LAA 1960. The reference is not a civil suit where the Land Administrator is the plaintiff. The documents
H submitted to the court in the reference by the Land Administrator are not “pleadings.” The reference record is primarily the notes of the enquiry by the Land Administrator, including valuation reports, and the notices under ss. 4, 8, 10, 11, 14, 16, 19, 20, 22, 38(1) and 38(5) of the LAA 1960. Intervener proceedings are therefore
I eminently unsuitable in a reference to court by the Land

Administrator. The scheme of the Act clearly suggests the only way a “person interested” can legitimately appear in court at a reference is upon written application in Form N under s. 38(1) LAA 1960 or upon receipt of a notice in Form P from the court under s. 43 LAA 1960.

[74] The main ground on which SPRINT relies to support its application to intervene in the reference is that SPRINT alleges that it is the party responsible to pay the compensation sum pursuant to a privatization agreement entered into with the Government of Malaysia. This purported responsibility to pay by SPRINT is irrelevant to the restricted scope of the inquiry under s. 44 of LAA 1960. In any event, on the undisputed facts, the affected lands were acquired by the Land Administrator on behalf of LLM and the compensation sum was paid by LLM. It is beyond dispute that LLM is legally and statutorily obliged to pay the compensation sum under s. 22 of the Highway Authority Malaysia (Incorporation) Act 1980. SPRINT did not at any time assert in the enquiry held before the Land Administrator under s. 12 LAA 1960 that SPRINT was prepared to pay any compensation sum awarded to Kenny Heights. SPRINT did not tender any valuation report to the Land Administrator at the enquiry.

[75] LLM is most certainly entitled to receive a notice from the court under s. 43 LLA 1960 in Form P of the hearing of the reference relating to the objection on the compensation sum by Kenny Heights, as LLM would fall under category (b) of persons listed in s. 43 LLA 1960 *viz*:

(a) ...

(b) the person or corporation, if any, on whose behalf the proceedings were instituted pursuant to section 3;

(c) ...

(d) ...

[76] In the above circumstances, the application to intervene by SPRINT in the reference to court by the Land Administrator under the provisions of the Land Acquisition Act is without merit and not sustainable. The application by SPRINT to intervene is an abuse of the process of court and contributes to an

A unnecessary delay in the speedy disposal of the reference. The issue in the reference is not as to which party is responsible for the payment of the compensation sum to Kenny Heights but on the question of the quantum of the compensation sum awarded to Kenny Heights by the Land Administrator.

B [77] The appeal is dismissed with costs. The order of the High Court judge is affirmed. Deposit to account of taxed costs of respondents.

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